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April 3, 1995

APR - 3 1995

COMMUNICATIONS SECTION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Consolidated Communications, Inc.'s Comments
in PP Docket No. 93-253

Dear Mr. Caton:

Enclosed for filing in the above-captioned case are the original and nine copies of Consolidated Communications, Inc.'s Comments. Also included is a Certificate of Service stating that all parties required to be served have been served.

Please return a stamped copy of these Comments to our messenger.

Sincerely yours,


Veronica M. Ahern

Enclosures

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

APR - 3 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding**

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PP Docket No. 93-253

DOCKET FILE COPY ORIGINAL

**COMMENTS
OF
CONSOLIDATED COMMUNICATIONS INC.**

Consolidated Communications Inc. ("CCI"), by its attorneys, hereby submits these Comments in support of the Emergency Petition for Waiver ("Petition") filed on March 28, 1995 by Telephone Electronics Corporation ("TEC"). In these Comments CCI urges the Commission to grant the Petition for TEC and for all similarly situated rural telephone companies willing to accept the limitations on the waiver proposed by TEC.

INTRODUCTION

CCI is a diversified telecommunications company headquartered in Mattoon, Illinois. The cornerstone of CCI activities is the Illinois Consolidated Telephone Company (ICTC), a rural telephone company serving east central Illinois with 85,500 access lines and \$59.645 million in annual gross revenues. In addition to ICTC, CCI has substantial interests in an interexchange carrier, a directory publishing company, a telemarketing operation and other telecommunications-related enterprises. As is the case with TEC, CCI's rural telephone company would qualify to bid in the auctions for the Personal Communications Services ("PCS") but for the "gross revenue cap" rule.¹ That rule provides that no applicant for the C or F Blocks

¹

See 47 C.F.R. § 24.709(a)(1).

of spectrum available in the PCS service, together with its affiliates, may have gross revenues of more than \$125 million in each of the last two calendar years.²

CCI has watched the progress of TEC's efforts in this matter with obvious interest. Only recently, however, has CCI become aware that both TEC and the Commission believe that TEC is the only holding company that is affected by the \$125 million limit. In order to protect its interests and in order to make it known that CCI is similarly situated, on March 29, 1995 CCI filed a Motion for Leave to Intervene in the D.C. Circuit Court of Appeals in Telephone Electronics Corporation v. FCC, Case No. 95-1015. If TEC's Petition were granted, as it is herein supported by CCI, CCI would withdraw that Motion.

DISCUSSION

1. The TEC Petition Should Be Granted For TEC And All Similarly Situated Companies.

TEC seeks a waiver of Section 24.709 (a)(1) of the Commission's Rules to the extent that rule is applied to include the gross revenues of TEC's non-rural telephone company affiliates in determining whether a rural telephone company meets the gross revenue cap of \$125 million in each of the last two calendar years...³

The TEC request is based on two facts. First, Congress, recognizing that service to rural areas may not be a priority for all service providers, granted preferential treatment for rural telephone companies. Congress believed that rural telephone companies would deploy new technologies and services rapidly in rural areas.

Second, Congress's intent is frustrated by application of the \$125 million limitation to TEC (and to other similarly situated rural telephone companies). The impact of the rule is to prevent TEC's rural telephone companies from bidding in the

² The rule also provides that no applicant may have more than \$500 million in total assets at the time the application is filed. CCI's total assets are \$230.2 million.

³ TEC Petition, p. 1.

C and F blocks because of their affiliation with companies having total gross revenues of over \$125 million. While the rule may be useful in screening out large bidders with the ability to cross-pool their resources, in the case of telephone companies other FCC rules offer protection against that occurrence. Therefore, TEC argues that the public interest would best be served by waiving Section 24.709(a)(1) for its rural telephone companies.

In addition, TEC proposes that the waiver be limited to truly rural areas and has suggested that its rural telephone companies be permitted to bid on the C and F Blocks only in those Basic Trading Areas ("BTAs") where they provide service and which have a population of less than 300,000. In this way, TEC would be fulfilling the Congressional mandate for rural telephone companies.

CCI supports the TEC Petition. It represents an effective way to assure that the auctions may go forward, that rural areas will receive service promptly and that bidders in the C and F Blocks will not be competing against entities with overwhelming resources. Further, while CCI recognizes that any waiver is intended to address special or unique circumstances, CCI believes that the TEC request must be extended to apply to all similarly situated rural telephone companies, that is, rural telephone companies, without attributable cellular interests, "that have been prohibited from bidding on channel C and F licenses in the BTAs where they provide telephone service."⁴ As CCI will now demonstrate, ICTC is such a similarly situated telephone company.

2. ICTC Is Prevented From Bidding By The Gross Revenue Cap

CCI's wholly owned subsidiary, Illinois Consolidated Telephone Company, is a rural telephone company pursuant to Section 24.720(e) and Section 1.2110(b)(3) of the Commission's Rules which define a rural telephone company as a local exchange carrier having 100,000 or fewer access lines, including affiliates. The

⁴

TEC Petition, p. 5.

total number of access lines of ICTC is 85,500. ICTC has no affiliates with access lines.

ICTC has no attributable ownership interest in cellular licenses in which there would be a significant overlap of a PCS licensed service area and a cellular geographic service area. While ICTC does hold ownership interests in overlapping CGSAs, the amount of ownership interest falls within the exception for rural telephone companies contained in Section 24.204 (d)(2)(ii). Specifically, ICTC holds the following ownership interests in cellular properties:

MSA 243	25.98%	RSA 2	5.20%
MSA 202	25.98%	RSA 5	25.98%
MSA 269	25.98%	RSA 6	16.78%
MSA 190	25.98%	RSA 8 & 9	4.0%

The limitation on ownership contained in the rules for cellular eligibility is 40% of the equity, outstanding stock or outstanding voting stock of a cellular licensee. As is evident from the above, CCI falls well within that limitation.

Thus, there is no bar to ICTC's bidding on the C and F frequency blocks but for the gross revenue cap found in Section 24.709 (a)(1). The \$125 million cap worked to prevent ICTC from bidding because, while its own gross revenues of \$59.645 million fell well below the cap, combined 1994 gross revenues of all CCI companies of \$213.194 million exceed the cap. Specifically the 1994 gross revenues of the CCI interexchange carrier were \$64.584 million. The directory services publishing company had 1994 gross revenues of \$57.422 million. The telemarketing company had gross revenues of \$4.365 million. Gross revenues of other affiliated companies, including paging, CPE and maintenance and leasing totaled \$27.177 million.

Nevertheless, as with TEC, there are adequate protections against ICTC cross-pooling its funds with those of its affiliates in the context of competitive bidding, or any other context. Like TEC's rural telephone companies, ICTC is separately incorporated and separately managed. Such structural separation has been considered a sufficient protection against cost-shifting. Further the Commission's affiliate transaction rules provide additional safeguards against cross-subsidization and cross-pooling.

Unlike TEC, a substantial portion of CCI's gross revenues does not come from resale operations. But like TEC, a substantial portion of those gross revenues are derived from entities with high operating costs.⁵ Thus like in the case of TEC, gross revenues are not a valid indication of the funds that may be available to be used in bidding in an auction.

It is clear that ICTC is, like TEC, prevented from bidding in the C and F Block auctions by the gross revenue cap. ICTC is thus a similarly situated company which should benefit from the waiver granted to TEC. If the Commission chooses not to grant the TEC waiver, or to limit the waiver only to TEC, ICTC requests that these Comments be considered a Petition for Waiver by CCI. Specifically, ICTC requests that, for good cause shown, the Commission waive the requirements of Section 24.209(a)(1) as they apply to the Illinois Consolidated Telephone Company.

3. ICTC Will Accept Limitations On Its Bidding.

CCI appreciates that TEC has narrowed its request for waiver so that the Commission can be assured that rural areas will benefit from the rapid deployment of PCS service. ICTC is similarly willing to limit its bidding to those BTAs which cover its service area and that have populations of less than 300,000. CCI

⁵ For example, the gross revenues of CCI's directory services company were \$57.422 million in 1994. But of that amount, before even considering other costs of doing business, almost \$19 million, or about 33%, was paid out in license fees to telephone companies.

believes that this limitation will help to assure that the auctions for those rural areas will include ready, willing and able rural telephone companies such as ICTC.

In addition, CCI believes that it, like TEC, merits a waiver, to the extent necessary, of Section 24.710 of the Commission's Rules to allow it to pay for any winning bids in annual installments, like other winners in the C and F Block auctions. ICTC does not however seek waiver of the Commission's Rules to allow it to bid as a small business.

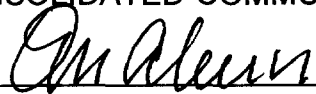
CONCLUSION

For the reasons stated herein, CCI supports the Emergency Petition for Waiver of TEC and believes it should be applied to all similarly situated rural telephone companies willing to limit their bidding to rural areas. CCI believes that TEC has shown good cause for grant of the waiver by showing how application of the gross revenue cap would undermine the intention of Congress to grant preferential treatment to rural telephone companies because those companies are most likely to bring service to rural areas quickly and efficiently. TEC has shown that the Commission's concerns regarding cross-pooling are dealt with adequately by other requirements of the Commission's rules. Therefore, the Commission should grant the waiver request as it applies to TEC and to any other rural telephone companies which are precluded from bidding in the C and F Block auctions because of the provisions

of Section 24.709 (a)(1). If the Commission is unwilling to grant the waiver as it applies to companies other than TEC without specific requests for waiver, then CCI requests that these Comments be treated as a request for waiver like TEC's for the same good cause shown.

Respectfully submitted,

CONSOLIDATED COMMUNICATIONS INC.

By: 

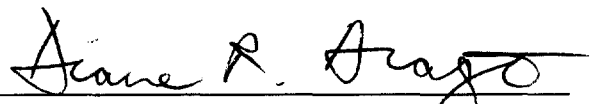
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April 3, 1995

CERTIFICATE OF SERVICE

I, Diane R. Drago, hereby certify that on the 3rd day of April, 1995, a copy of the foregoing COMMENTS OF CONSOLIDATED COMMUNICATIONS, INCORPORATED was caused to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


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